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OFFICE OF PETITIONS

In re Patent No. 7,125,336 :
Anttila, et al. : DECISION ON REQUEST
Issue Date: October 24, 2006 : FOR
Application No. 10/017,382 : RECONSIDERATION OF
Filed: December 18, 2001 : PATENT TERM ADJUSTMENT
Atty Docket No. 004770.00030 :

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed December 18, 2006. Patentees request an addition of 346 days of patent term adjustment for a total of one thousand and twenty-one (1021) days. The petition will be treated under 37 C.F.R. § 1.705(d).

The request for reconsideration of the patent term adjustment under § 1.705(d) is DISMISSED.

Patentees are given **TWO (2) MONTHS** from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Patentees filed an application for patent term adjustment as it related to the Office's failure to issue a patent within three (3) years of the application's filing date. On September 14, 2006, the Office mailed a decision holding the application for patent term adjustment in abeyance until the patent issued. Patentees had two (2) months from the issue date of the patent to file a request for reconsideration of the patent term adjustment for Office failure to issue the patent within three

(3) years. On October 24, 2006, the above-identified application matured into U.S. Patent No. 7,125,336, with a revised Patent Term Adjustment of 675 days. The instant request for reconsideration, filed on December 18, 2006, was timely filed within 2 months of the date the patent issued. See § 1.705(d). Patentees assert that an additional period of adjustment of 346 days should have been entered for the Office taking in excess of three years to issue the patent plus the number of days beyond 14 months that it took for the Office to mail a first Office action, which was 346 days beyond 14 months after filing the application.

The Office did enter a period of adjustment of 346 days pursuant to 37 CFR 1.702(a)(1), as well as, a period of adjustment of 71 days pursuant to 37 CFR 1.702(a)(4). Moreover, with respect to §1.703(b), it is noted that the patent issued three years and 675 days after its filing date. However, considering the extent to which the periods of adjustment overlap, the application is only entitled to an additional period of adjustment of 258 days pursuant to 37 CFR 1.703(b).

Specifically, the period for over 3 year pendency does not overlap only to the extent that the actual dates in the period beginning three years after the date on which the application was filed overlap with the actual dates in the periods for failure of the Office to take action within specified time frames. In other words, consideration of the overlap does not begin three years after the filing date of the application. Patentees are incorrect in treating the relevant period as starting on December 18, 2004, the date that is 3 years after the actual filing date of the application.

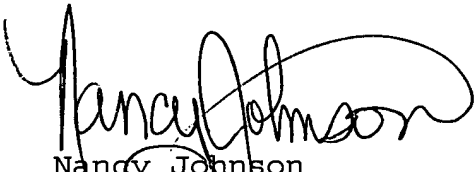
Any days of delay for Office issuance of the patent more than 3 years after the filing date of the application, which overlap, with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. Further, in considering the overlap, the entire period during which the application was pending (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). See 35 U.S.C. 154(b)(1)(B); 35 U.S.C. 154(b)(2)(A); and 37 CFR 1.703(f). In this instance, it was properly concluded that the 346 and 71

days accorded pursuant to 1.702(a)(1) and (4) for Office delay during the pendency of the application overlapped with the 675 days for Office delay in issuance of the patent. Thus, only the additional non-overlapping period of (675 - 417) 258 days was entered for Office delay in issuing the patent pursuant to 37 CFR 1.703(b).

In view thereof, the patent term adjustment of 675 (346 + 71 + 258) days indicated in the patent is correct.

Patentees have paid the \$200.00 petition fee set forth in 37 CFR 1.18(e) twice. Deposit account no. 19-0733 will be refunded \$200.00 in due course.

Telephone inquiries specific to this matter should be directed to Shirene Willis Brantley at (571) 272-3230.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized loop at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions